

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	*	Case No. 10-CR-70 (JBW)
	*	
	*	Brooklyn, New York
	*	October 4, 2010
v.	*	
	*	
PHYLLIS SEEMONGAL,	*	
	*	
Defendant.	*	
	*	
* * * * *		

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:	RICHARD M. TUCKER, ESQ. WILLIAM DAVID SARRATT, ESQ. Asst. United States Attorney United States Attorney's Office 271 Cadman Plaza Brooklyn, NY 11201
---------------------	---

For the Defendant:	DOUGLAS G. MORRIS, ESQ. Federal Defenders of New York, Inc. 16 Court Street Brooklyn, NY 11201
--------------------	--

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

Fiore Reporting and Transcription Service, Inc.
4 Research Drive, Suite 402
Shelton, Connecticut 06484 (203)929-9992

1 (Proceedings commenced at 11:30 a.m.)

2 THE COURT: Please be seated.

3 THE CLERK: Criminal cause for a pleading, 10-CR-
4 70, United States versus Phyllis Seemongal. Counselors,
5 please state your appearances for the record.

6 MR. TUCKER: Richard Tucker for the United States.
7 Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. SARRATT: Good morning, Your Honor. David
10 Sarratt for the United States as well.

11 THE COURT: Good morning.

12 MR. MORRIS: Douglas Morris of Federal Defenders,
13 with my client Ms. Phyllis Seemongal. Good morning, Judge.

14 THE COURT: Good morning. All right.

15 The first matter we need to take up, Ms.
16 Seemongal, is whether you consent to me hearing your guilty
17 plea.

18 Your case is assigned to Judge Weinstein. He will
19 be sentencing you if the plea is accepted. But I can't hear
20 your plea without your consent.

21 Do you consent to me hearing your guilty please?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: You're really going to have to speak
24 up, ma'am.

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. Now I have to ask you a series
2 of questions as we go through this plea proceeding. Listen
3 carefully.

4 Make sure you understand my questions because you
5 will be under oath when you answer and that means if you gave
6 a false answer to any of my questions, you could be charged
7 with an additional crime which is the crime of perjury or
8 making a false statement.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. Would you swear Ms. Seemongal?

12 (The defendant is sworn.)

13 THE COURT: All right. What is your full name?

14 THE DEFENDANT: Phyllis Seemongal.

15 THE COURT: How old are you?

16 THE DEFENDANT: 48.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: Three years of college.

19 THE COURT: Are you presently under the care of any
20 doctors?

21 THE DEFENDANT: No.

22 THE COURT: In the past 24 hours, have you had any
23 narcotics, medicine, pills or alcohol?

24 THE DEFENDANT: No.

25 THE COURT: Have you ever been treated for drug

1 addiction?

2 THE DEFENDANT: No.

3 THE COURT: Is your mind clear today?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand what's going on here
6 today?

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. Morris, have you discussed this
9 matter with your client?

10 MR. MORRIS: Yes.

11 THE COURT: And in your view, does she understand
12 the rights she'll be waiving by pleading guilty?

13 MR. MORRIS: Yes.

14 THE COURT: Do you have any questions about her
15 competence?

16 MR. MORRIS: No.

17 THE COURT: Did you advise her of the maximum
18 sentence and fine that can be imposed?

19 MR. MORRIS: Yes.

20 THE COURT: Have you discussed the sentencing
21 guidelines with her?

22 MR. MORRIS: Yes.

23 THE COURT: Ms. Seemongal, have you had enough time
24 to discuss your case with Mr. Morris?

25 THE DEFENDANT: Yes.

1 THE COURT: Are you satisfied to have him represent
2 you?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you read a copy of the indictment
5 containing the charges?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand the charges?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you discuss them with Mr. Morris?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that you have a
12 right, Ms. Seemongal, to plead not guilty to the charges in
13 the indictment?

14 THE DEFENDANT: Yes.

15 THE COURT: And if you plead not guilty to the
16 charges in the indictment, are you entitled to a speedy,
17 public trial by a jury with your lawyer's assistance.

18 THE DEFENDANT: Yes.

19 THE COURT: If you went to trial, Ms. Seemongal, at
20 trial you would be presumed innocent and the government would
21 have to overcome the presumption of innocence and the
22 government would have to prove your guilt both by competent
23 evidence and beyond a reasonable doubt. You would not have
24 to prove that you were innocent.

25 And if the government failed to prove your guilt

1 beyond a reasonable doubt, the jury at the trial would then
2 have a duty to find you not guilty. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Now if you went to trial, at trial
5 witnesses for the government would come to court and they
6 would testify in front of you.

7 And Mr. Morris would have a right to cross-examine
8 those witnesses and he could object to evidence offered by
9 the government and he could offer evidence for you.

10 Do you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: In addition at your trial, while you
13 would have a right to testify if you chose to, you couldn't
14 be forced to take the witness stand and that's because under
15 our Constitution a defendant in a criminal case cannot be
16 forced to take the witness stand and be a witness against
17 herself.

18 So if you decided at your trial, if you went to
19 trial, that you didn't want to testify, Judge Weinstein would
20 actually direct the jury that they couldn't hold the fact
21 that you hadn't testified against you. Do you understand
22 that?

23 THE DEFENDANT: Yes.

24 THE COURT: I can't hear you.

25 THE DEFENDANT:

1 THE COURT: Now if you plead guilty and your plea
2 is accepted, you will be giving up your rights to the trial.
3 There'll be no trial of any kind and instead the Court will
4 simply enter a judgment of guilty based on your guilty plea
5 here today.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Also if you plead guilty, I have to ask
9 you questions about what you did because I have to be
10 satisfied that you are in fact guilty of the charge.

11 You will have to answer my questions and
12 acknowledge your guilt and when you do that, you will be
13 giving up that right I described a moment ago which is the
14 right not to be a witness against yourself.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Are you willing to give up your
18 right to the trial, Ms. Seemongal?

19 THE DEFENDANT: Yes.

20 THE COURT: Let me hand you your plea agreement.
21 Have you read that document, the plea agreement, very
22 carefully?

23 THE DEFENDANT: Yes.

24 THE COURT: Excuse me?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. And after you read it, did you
2 discuss it with Mr. Morris?

3 THE DEFENDANT: Yes.

4 THE COURT: After you and Mr. Morris discussed the
5 plea agreement, did you understand everything in it?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you agree to the terms that are
8 contained in it?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you sign it at the end to show your
11 agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Is that your signature on the last
14 page? Oh, Mr. Tucker, I don't think you've signed.

15 MR. TUCKER: I haven't, Your Honor. I wasn't aware
16 that she signed it.

17 THE DEFENDANT: Yes.

18 THE COURT: Has anybody made any promise to you
19 that's not contained in that written plea agreement? Any
20 promises about your case?

21 THE DEFENDANT: No.

22 THE COURT: Okay. All right. We're just going to
23 give it to Mr. Tucker to sign.

24 MR. TUCKER: Your Honor, the financial affidavit is
25 attached to the plea agreement. I'm just asking defense

1 counsel for that now --

2 THE COURT: Oh. Fine.

3 MR. TUCKER: -- so I can quickly look at it.

4 THE COURT: Okay.

5 MR. TUCKER: To include that here. Thank you.

6 THE COURT: Has anybody threatened or forced you to
7 plead guilty?

8 THE DEFENDANT: No.

9 MR. TUCKER: Thank you, Your Honor.

10 THE COURT: You're welcome. Okay. Let's review
11 the potential penalties here. There is a maximum 30-year
12 term of imprisonment. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: There is a supervised release term of
15 up to five years and supervised release is like a term of
16 probation in the sense that when you are on supervised
17 release for whatever term Judge Weinstein sets, you're free
18 and you are at liberty, but you are under the supervision of
19 the Probation Department and you must abide by any conditions
20 they set as part of your supervised release.

21 If you violate a condition of your supervised
22 release, depending on how serious the violation is, you could
23 be ordered returned to prison for up to three additional
24 years. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: There's a fine of up to \$1 million. Do
2 you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And it may be that the Court orders you
5 to make restitution. Do we know the amount of restitution,
6 Mr. Tucker?

7 MR. TUCKER: Not at this time, Your Honor. It's
8 not been agreed upon. It will be determined by the Court in
9 the course of a prison sentence.

10 THE COURT: Have you discussed restitution with
11 your client, Mr. Morris?

12 MR. MORRIS: Yes.

13 THE COURT: There's a mandatory \$100 special
14 assessment. Do you understand that, Ms. Seemongal?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you and Mr. Morris discussed the
17 sentencing guidelines?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that the sentencing
20 guidelines, which used to be mandatory for judges to follow,
21 are no longer mandatory, but are now what we call advisory?

22 And that means that Judge Weinstein will look to
23 the guidelines to see what they would say about your case,
24 but then consider many other factors to determine what your
25 sentence should be.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Under certain circumstances, you can
4 appeal your sentence. I see that in paragraph 4 of your plea
5 agreement you've agreed not to appeal your sentence if it's
6 37 months or less. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Is that correct, Mr. Morris?

9 MR. MORRIS: Yes.

10 THE COURT: Okay. Now prior to your sentencing,
11 you're going to get a chance to read a document called a pre-
12 sentence report prepared by the Probation Department and that
13 will be all about you and it will recommend a guideline and
14 if you think there's anything factually incorrect in the pre-
15 sentence report, you can challenge what you think is
16 incorrect at a hearing prior to your sentencing.

17 But the only situation in which you could appeal
18 would be as I said if you received a sentence of over 37
19 months. You understand?

20 THE DEFENDANT: Yes.

21 THE COURT: Is there anything else from the plea
22 agreement you'd like me to review, Mr. Tucker?

23 MR. TUCKER: No, Your Honor. Not at this time.

24 THE COURT: What about you, Mr. Morris?

25 MR. MORRIS: No, Judge.

1 THE COURT: Okay. Do you have any questions you
2 want to ask me, Ms. Seemongal, about the charge, your rights
3 or anything else relating to this matter?

4 THE DEFENDANT: No.

5 THE COURT: Are you read to plead?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Morris, do you know of any reason
8 why your client should not plead guilty?

9 MR. MORRIS: No good reason in the present
10 circumstances.

11 THE COURT: What is your plea to Count 1? Guilty
12 or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: Are you making this plea of guilty
15 voluntarily and of your own free will?

16 THE DEFENDANT: My own free will.

17 THE COURT: Okay. Tell me in your own words what
18 it is you did to commit the crime charged.

19 MR. MORRIS: Your Honor, may I ask my client some
20 questions?

21 THE COURT: Oh, yes. Yes. Thank you. Okay.

22 MR. MORRIS: Ms. Seemongal, I direct your attention
23 to the time period between March of 2006 and April of 2008.
24 In that time, did you work with others in terms of real
25 estate transactions?

1 THE DEFENDANT: Yes.

2 MR. MORRIS: And did you in working with them
3 prepare and submit loan applications to various banks and
4 mortgage companies?

5 THE DEFENDANT: Yes.

6 MR. MORRIS: And did you know when you did this
7 that these applications contained various false statements?

8 THE DEFENDANT: Yes.

9 MR. MORRIS: And did you in doing that misrepresent
10 the financial information of certain straw buyers on the
11 mortgage applications?

12 THE DEFENDANT: Yes.

13 MR. MORRIS: And did you do that with the purpose
14 of fraudulently inducing the banks and mortgage lenders to
15 approve loans?

16 THE DEFENDANT: Yes.

17 MR. MORRIS: And did these misrepresentations
18 include falsely increasing income and bank account balances?

19 THE DEFENDANT: Yes.

20 MR. MORRIS: And did you do this within Queens and
21 Brooklyn?

22 THE DEFENDANT: Yes.

23 MR. MORRIS: And that was part of an understanding
24 that you had with the other people that you were doing this
25 with, correct?

1 THE DEFENDANT: Yes.

2 MR. MORRIS: I have no further questions.

3 THE COURT: Mr. Tucker, you want to ask some
4 questions?

5 MR. TUCKER: Your Honor, I think the only thing
6 we're missing is that these transactions involved interstate
7 wire transfers.

8 MR. MORRIS: We have no objection to that, Judge.

9 THE COURT: And is that, in fact, what the evidence
10 would show?

11 MR. TUCKER: Yes, Your Honor.

12 THE COURT: Okay. All right. Based on the --

13 MR. TUCKER: And it's on submission, Your Honor.

14 THE COURT: -- yes. Based on the information I've
15 heard, I find that the defendant is acting voluntarily, fully
16 understands her rights and the consequences of her plea and
17 that there is an adequate factual basis for the plea to
18 Count 1 so I recommend to Judge Weinstein that he accept the
19 plea of guilty.

20 Do we have a sentencing date?

21 MR. MORRIS: Your Honor, may I just have one moment
22 to consult with the government?

23 THE COURT: Yes. Yes.

24 MR. MORRIS: Thank you.

25 (Both counsel confer.)

1 MR. MORRIS: Your Honor, we would just request
2 that -- I think this is a joint request, that the pre-
3 sentence interview held in abeyance until after the trial of
4 the co-defendants.

5 MR. TUCKER: The government has no objection to
6 that. And to answer Your Honor's question, I don't think we
7 actually have a date right at this moment.

8 This matter is set to go to trial at the end of
9 November --

10 THE COURT: Okay.

11 MR. TUCKER: -- with her co-defendants, so --

12 THE COURT: Right.

13 MR. TUCKER: -- we'll confirm with --

14 THE COURT: Okay.

15 MR. TUCKER: -- Judge Weinstein's chambers.

16 THE COURT: All right. Application granted. Is
17 she out on bail?

18 MR. MORRIS: Yes.

19 THE COURT: Is there any objection to bail being
20 continued?

21 MR. TUCKER: No, Your Honor.

22 THE COURT: Okay. Thank you. Bail's continued.
23 Here you go.

24 MR. MORRIS: Thank you.

25 MR. TUCKER: Thank you, Your Honor.

1 MR. SARRATT: Thank you, Your Honor.

2 (Proceedings concluded at 11:46 a.m.)

3 I, CHRISTINE FIORE, court-approved transcriber and
4 certified electronic reporter and transcriber, certify that
5 the foregoing is a correct transcript from the official
6 electronic sound recording of the proceedings in the above-
7 entitled matter.

8 
9

10 November 5, 2010

11 _____
12 Christine Fiore, CERT
13
14
15
16
17
18
19
20
21
22
23
24